

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653 (KRH)
.
.
.
CIRCUIT CITY STORES, . 701 East Broad Street
INC., . Richmond, VA 23219
.
.
Debtor. . April 28, 2009
. 10:06 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: McGuire Woods LLP
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Canada: By: RICHARD M. HUTSON, II, ESQ.
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1 COURTROOM DEPUTY: All rise. The United States
2 Bankruptcy Court for the Eastern District of Virginia is now in
3 session. The Honorable Kevin R. Huennekens presiding. Please
4 be seated and come to order.

5 COURT CLERK: In the matter of Circuit City Stores,
6 Incorporated, hearings on Items 1 through 30 as set out on
7 debtors' agenda.

8 MR. FOLEY: Good morning, Your Honor, Doug Foley from
9 McGuire Woods on behalf of the debtors.

10 THE COURT: Good morning, Mr. Foley.

11 MR. FOLEY: With me at counsel table is Dan Blanks
12 with McGuire Woods and Ian Fredericks from Skadden Arps. Also
13 today in the courtroom is Michelle Mosier, Chief Financial
14 Officer of the debtors. Your Honor, we have 30 items on the
15 agenda today. We should be relatively brief we believe. We've
16 been able to resolve some things or agreed to adjournments with
17 most of the parties to try to continue to work through
18 potential resolutions.

19 Your Honor, the first three items, Item Number 1 is a
20 motion by AT&T to reject certain equipment leases and to compel
21 payment of some rental payments. We've been working with
22 counsel from AT&T and we've agreed to an order that partially
23 resolves this motion. It resolves the motion in a way that
24 sets the rejection date as of March 31st. We've paid through
25 that date equipment rental. What they wanted to reserve and

1 have this motion carried over -- the balance of this motion
2 carried over to the May 28th docket is their request -- their
3 right that they wanted to reserve to assert that we owe rental
4 payments for the month of April and our right to dispute that.
5 So we're going to try to work through that over the next month.
6 If we can't resolve it then we'll have a hearing on May 28th as
7 to that piece of the motion.

8 THE COURT: All right, very good. So I'll look for
9 that order.

10 MR. FOLEY: Your Honor, Items Number 2 and 3, the TKG
11 Coffee 365(d)(3) motion and the Action Link Administrative
12 Expense Claim motion we have reconciled the amounts of those
13 two claimants and they've authorized us to report to the Court
14 that they are withdrawing those motions from the Court's
15 docket.

16 THE COURT: All right, very good.

17 MR. FOLEY: Your Honor, Item Number 4 is the pretrial
18 conference on the Mondragon WARN Act lawsuit. Your Honor, we
19 appreciate Your Honor entering the order we submitted yesterday
20 with respect to continuing the pretrial conference to the May
21 28th docket and setting up a briefing schedule with respect to
22 our motion to dismiss which will be due on May 1st. Their
23 reply -- response will be on May 15th and our reply, if we
24 choose to file one, will be on May 22nd. And we'll have that
25 matter heard again on the May 28th docket.

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, Item Number 5 is again on a
3 claims trading and sell down procedures motion which we've been
4 carrying on the docket for a long time now. The company and
5 the committee are still evaluating whether the value of the NOL
6 can be used with respect to a plan of liquidation. So we've
7 agreed with the committee to continue this again to the May
8 13th hearing date.

9 THE COURT: All right.

10 MR. FOLEY: Item Numbers 6 and 7, Your Honor, these
11 are Motorola and General Instruments 503(b)(9) motions for
12 payment of their alleged 503(b)(9) claims. Those two parties
13 have requested that their motions be adjourned to the May 28th
14 hearing date and we have agreed to that request. Item Number
15 8, Your Honor, this is our motion to settle certain issues with
16 IBM under Rule 9019. The resolution of this -- the
17 presentation of this motion won't be ripe until we finish the
18 IP Sale procedures process which is still ongoing. The bids
19 are due on April 6th and the auction to the extent we get
20 competing bids will be on May 11th. So we've asked -- IBM has
21 asked that we continue this matter until the May 13th hearing
22 date.

23 THE COURT: All right.

24 MR. FOLEY: Your Honor, Item Number 9 which is the
25 Federal Warranty and Assurant matter, we have a couple counter

1 proposals out to them on a global settlement. It involves
2 whether or not we're going to have an earn out of the proceeds
3 of some warranty sales versus a lump sum payment. And so we're
4 still negotiating with that party and they've requested, and
5 we've agreed to continue their motion over to the May 13th
6 hearing date.

7 THE COURT: All right.

8 MR. FOLEY: Your Honor, Item Number 10 is a motion by
9 Congressional North Associates which is a landlord under
10 365(d)(3). Most of the landlords have agreed, as you will see
11 further down on the docket, to have these matters carried over
12 to the May 28th hearing date. We're still trying to reconcile
13 various issues related to CAM and taxes.

14 Your Honor, Item Number 11 which is the remaining
15 cure disputes under our lease disposition procedures order, all
16 of the matters there Items Number -- sub-Item A, B, C, D, E,
17 and F, all of those parties have agreed to adjourn their
18 objections to the May 28th hearing date so we can continue to
19 reconcile the CAM issues and taxes. There will be some issues
20 related to attorney's fees with respect to each of the
21 landlords under the leases that we're trying to resolve as
22 well.

23 Your Honor, actually Item Number B on Page 10, the
24 limited objection of the TSA Stores, that one actually has been
25 resolved. So that can be removed from the court's docket.

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, Items Number 12 and 13 are
3 similar, DIRECTV as motion for relief on the automatic stay to
4 set off or recoup various amounts as well as Sony's request for
5 payment of administrative claims. We have with both of these
6 vendors participated and allowed some reclamation to occur with
7 respect to their product. And we believe that at the end of
8 the day when we reconcile these two motions or these two
9 vendors' claims that there'll actually be money coming back to
10 the estate, some significant amounts. DIRECTV, maybe as much
11 as a half million dollars, and Sony may be as much as a million
12 dollars. So we're still working through that. They have both
13 requested, and we have agreed, to continue their motions to the
14 May 13th hearing day.

15 THE COURT: All right.

16 MR. FOLEY: Your Honor, Item Numbers 14 and 15 are
17 motions for request to permit the late filing of proof of
18 claim. Number 14 is the Chalifoux matter which is a general
19 unsecured claim. Number 15 is the Sennheiser Electric Corp.
20 matter which is an alleged 503(b)(9) claim. Counsel for
21 Chalifoux is here and they have agreed to adjourn their motion
22 for the reasons that we have stated in our papers with respect
23 to the need for discovery and not having to -- not wanting to
24 incur those costs unless, until we have to, to the June 23rd
25 hearing date. And that's Number 14. And with respect to

1 Number 15 the Sennheiser Electric Corp. matter they have agreed
2 to adjourn their matter until the May 13th hearing date for
3 now. We will probably seek a further adjournment of that.

4 THE COURT: All right.

5 MR. FOLEY: Number 16, Your Honor, is the SouthPeak
6 Interactive, LLC alleged 503(b)(9) claim. This involves
7 approximately \$184,000. They have agreed also to adjourn their
8 matter -- their motion until the May 13th hearing date.

9 THE COURT: All right. Very good.

10 MR. FOLEY: Your Honor, Item Number 17 this involves
11 Google and Postini's motion to reject and motion for payment.
12 We have resolved the issue with Postini with respect to the
13 motion to reject which will be heard at Item Number 28 on the
14 docket. But we have also reconciled the amounts owed to Google
15 and payments are being processed to them. It's almost a couple
16 million dollars. The Postini amounts are still being
17 reconciled although that's a much smaller number. But they
18 have agreed to adjourn -- Mr. Campson has agreed that this
19 matter can be adjourned until the May 13th hearing date.

20 THE COURT: All right.

21 MR. FOLEY: Your Honor, Items Number 18 and 19 are
22 two more landlord motions. This is the RLV Village Plaza
23 motion and the Geenen DeKock properties motion. These are
24 under 365(d)(3) request for payments of administrative claims
25 similar to the other landlord matters, Your Honor. They have

1 agreed to adjourn their motions until the May 28th hearing
2 date.

3 THE COURT: All right.

4 MR. FOLEY: Similarly, Your Honor, Item Number 20
5 involves the Lea Company which is again a landlord alleging an
6 administrative claim under 365(d)(3) and 503(b). They've
7 similarly have requested, and we've agreed to adjourn their
8 motion until the May 28th hearing date.

9 THE COURT: All right.

10 MR. FOLEY: Your Honor, Item Number 21 Crossways
11 Financial Associates request for administrative claim under
12 365(d)(3) again similarly to the previous landlord motion
13 they've all agreed to adjourn their motion until the May 28th
14 hearing date.

15 THE COURT: All right.

16 MR. FOLEY: Your Honor, Item Number 22 is the motion
17 by Vertis to allow the late filing of proof of claim. This is
18 a general unsecured claim and they have agreed to adjourn their
19 request until the May 13th hearing date.

20 THE COURT: All right.

21 MR. FOLEY: Your Honor, Item Number 23 --

22 (Pause)

23 MR. FOLEY: Your Honor, Item Number 23, I believe, is
24 **Polaris'** amended motion under 365(d)(3) which involves a
25 request for payment of stub rent taxes on certain CAM and

1 attorney's fees charges. Mr. Fredericks advises me that
2 although they've agreed to adjourn this matter until the May
3 13th hearing date they will probably wish to proceed on that
4 date. So just wanted to advise the Court that that one
5 probably will go forward.

6 THE COURT: All right.

7 MR. FOLEY: Your Honor, that takes care of matters
8 that are being continued, Your Honor. Items Number 24 through
9 30 are the matters that we've asked the Court to address today.
10 Item Number 24, Your Honor, is our motion to settle certain
11 business interruption claims as a result of Hurricane Gustav
12 with certain of our insurance carriers. The settlement amount
13 is very close to what we originally demanded. We originally
14 demanded \$166,000, they've agreed to \$136,000. Unfortunately
15 there's \$100,000 deductible so the net to the estate is only
16 36,000. But the settlement is fair and reasonable and
17 satisfies the standard under Rule 9019. We've received no
18 objections or responses to the motion and would ask the Court
19 to approve that settlement.

20 THE COURT: Does any party wish to be heard in
21 connection with the settlement of the insurance claim? All
22 right, that'll be approved, Mr. Foley. Submit an order,
23 please.

24 MR. FOLEY: Thank you, Your Honor. Item Number 25,
25 Your Honor, we filed our response with respect to that motion

1 for relief from stay from the alleged class claimants, the Ada
2 Alicea matter. As a result of our filing of our response
3 counsel for the movant has agreed to an order denying the
4 motion for relief from stay which we have BOPed in this
5 morning. So as soon as Your Honor, gets to that order this can
6 be removed from the docket.

7 THE COURT: All right. Thank you.

8 MR. FOLEY: Your Honor, Item Number 26 is a
9 procedural request by us to seal certain information in the
10 Streambank retention application that relates to certain
11 compensation methodology that they would receive in assisting
12 with the sale of the IP assets. I've spoken to the Office of
13 the United States Trustee with respect to that and as Your
14 Honor is aware from reviewing the pleadings only certain
15 amounts are redacted. The purpose of our request to seal that
16 information is to make sure that the bidding is not influenced
17 one way or the other by how the expert who is assisting with
18 the sale process may value the transaction. And so my
19 understanding is that the Office of United States Trustee does
20 not have an objection to the seal motion. We would ask that
21 that be granted, Your Honor.

22 THE COURT: Does any party wish to be heard in
23 connection with the seal motion? All right, the motion will be
24 granted.

25 MR. FOLEY: Your Honor, Mr. Fredericks will deal with

1 the actual retention application itself.

2 MR. FREDERICKS: Good morning, Your Honor, Ian
3 Fredericks from Skadden Arps Slate Meagher & Flom. We are here
4 today on matter Number 27 which is the debtor's application to
5 retain Streambank as its intellectual property dispossession
6 consultant. As set forth in the application Streambank will
7 essentially be serving a dual role. They will be marketing
8 together with Rothschild the intellectual property assets that
9 are the subject of the current motion where Systemax is the
10 stalking horse bidder. They will be compensated to the extent
11 they bring new parties to the table who bid in excess of
12 Systemax's current bid. There is a small group of people which
13 are set forth on an exhibit to the motion that are expressly
14 excluded from that role. Those are parties that Rothschild had
15 been in discussions with during the sale process.

16 The second role is basically to help the company
17 identify and market it's remaining intellectual property assets
18 most notably the Fire Dog related trademarks and intellectual
19 property. And Streambank will be compensated differently than
20 the way it's compensated for what they call, I believe, the
21 Group 1 Assets for these Group 2 Assets. The debtors believe
22 that the retention of an intellectual property consultant is in
23 the best interest of the estates. It'll maximize value and
24 that the fees and charges are reasonable in light of the
25 services that Streambank will provide. Notably Streambank will

1 be compensated for most of Streambank's compensation. It's any
2 nonbillable -- or any nonbillable hour work will be compensated
3 and paid under Section 328. Any billable -- any hourly work
4 that Streambank does will be reimbursed or paid under Section
5 330.

6 There was one informal -- or agreement reached
7 between the committee and Streambank. This related to a
8 discretionary success fee. Originally I believe this fee was
9 payable after consultation with the committee. Streambank has
10 agreed that this will only be paid after -- or with the
11 committee's consent. And with that change which we will note
12 in the revised order the debtors would request that the Court
13 approve the application

14 THE COURT: All right. Does any party wish to be
15 heard in connection with the application to employ Streambank?
16 All right, there being no objection that motion will be
17 approved.

18 MR. FREDERICKS: Thank you, Your Honor. If it is
19 acceptable to the Court I'd like to jump ahead to the document
20 destruction motion which is the last item on the agenda, matter
21 Number 30.

22 THE COURT: You may.

23 MR. FREDERICKS: There was an informal response --
24 this motion basically asked the Court to set up procedures
25 whereby the debtors will abandon or destroy documents that they

1 no longer need, obviously business records, financial documents
2 they no longer need once that time comes. Essentially what it
3 does is set up a procedure whereby we file a notice and parties
4 have five business days to object. And if there's no objection
5 then the debtors are free to proceed with abandoning or
6 destroying the records. At the outset shortly after the
7 hearing we will be filing a notice to abandon and destroy a
8 large number of records that are very out of date most of
9 which, if not all of which, have been stored on backup tapes or
10 electronically that are currently -- where the debtors are
11 currently incurring significant amounts of storage costs and
12 these records are no longer necessary. So that will kind of be
13 the first wave of documents that will leave. But that will
14 obviously be subject to the procedures.

15 We did receive an informal response from Old
16 Republic. Old Republic is, I believe, the debtor's largest
17 insurer. And Old Republic was concerned that five business
18 days was not adequate notice. We were able to talk with them.
19 We agreed to add them as a notice party and advise them that to
20 the extent they needed additional time they could certainly
21 file an objection or reach out to us to discuss those issues,
22 but we didn't think it made sense to extend the deadline
23 globally in the event that there may never be an issue. Old
24 Republic agreed with that so we're adding them as a notice
25 party, specifically their counsel.

1 In addition, as I went back and looked at the order I
2 realized that given the procedures that are in place it's easy
3 enough to add the (indiscernible) 2002 to the list given that
4 everything's served by email or fax. So we are going to add
5 them as notice parties as well. And with those changes to the
6 order I believe that resolves the informal objection, and I
7 don't believe there are any other objections. We'd ask that
8 the Court approve the procedures.

9 THE COURT: So if you issued a notice Old Republic's
10 going to be on the list now of recipients to receive that, and
11 they raise some objection then it would just delay the process
12 and we'd have an opportunity to have a hearing on that to
13 decide whether or not those records should be destroyed.

14 MR. FREDERICKS: Yes. I mean the way that the
15 procedure's set out that's absolutely the way that it would
16 work. We would initially obviously try to work with Old
17 Republic. To the extent they just needed a few more days or
18 some additional information on the categories of documents that
19 were to be destroyed, you know, we would work to try to resolve
20 that. To the extent we couldn't reach a resolution I believe
21 the procedures provide for a -- that we can come in on an
22 expedited basis including to be heard telephonically.

23 THE COURT: But the default is that if somebody
24 raises an objection within the five days they don't have to
25 come in and get a hearing from the Court. The default is

1 nothing's destroyed until we can resolve it.

2 MR. FREDERICKS: That's absolutely correct, Your
3 Honor.

4 THE COURT: Very good. Does any party wish to be
5 heard in connection with the motion? Mr. Van Arsdale.

6 MR. VAN ARSDALE: Your Honor, I would only request
7 that the privacy ombudsman be added as one of the notice
8 parties in this case as we do have one. That's Lucy Thomson.

9 THE COURT: All right. And I assume your office is
10 also include on the list.

11 MR. VAN ARSDALE: It is.

12 THE COURT: All right. Thank you.

13 MR. FREDERICKS: And that's acceptable to the debtors
14 as well. Just to give the Court a little bit of an update on
15 that we have been working with the privacy ombudsman on the
16 intellectual property sale and she has raised concerns with
17 other document retentions which we've told her we would discuss
18 separately as those issues arose. So we are in discussions
19 with her providing her with information that she's requested
20 for the IP sale and I think that process is moving along
21 nicely.

22 THE COURT: All right, very good. All right, well
23 let's add her to the list of notice parties. And with that
24 change the Court will approve that order.

25 MR. FREDERICKS: Thank you, Your Honor. With that

1 I'll turn it back over to Mr. Foley. Thank you.

2 THE COURT: Thank you, Mr. Fredericks.

3 MR. FOLEY: Your Honor, that leaves two items on the
4 agenda this morning. The first one is Item Number 28 which is
5 our fifth omnibus objection to reject certain executory
6 contracts. Your Honor, I referenced this earlier. There are
7 three contracts listed in the motion. One is with Avaya World
8 Services, one is Foresight Solutions Group, Inc., and one is
9 the Postini one which is a wholly-owned subsidiary of Google
10 which I mentioned earlier, Your Honor. All of these are
11 essentially customer service agreements. And the rejection
12 date with respect to these the company is no longer using the
13 services provided for under these contracts is April 28th.
14 Your Honor, we've not received any responses or objections to
15 the motion which we believe sets -- meets the standards of
16 Section 365 and the Court should authorize us to reject these
17 agreements.

18 THE COURT: Does any party wish to be heard on the
19 debtor's fifth omnibus motion to reject these lease? All
20 right, that will be granted.

21 MR. FOLEY: Thank you, Your Honor. Your Honor, that
22 leaves, I believe, the motion of Export Development of Canada's
23 motion. Your Honor, we requested and offered an adjournment as
24 we did with the other parties that were seeking to -- the
25 allowance of or timeliness of a late filed claim. We wanted

1 the adjournment to be without prejudice to our rights or
2 without prejudice to them asserting that we somehow should have
3 done discovery during the interim because the whole point, Your
4 Honor, is that we don't know yet whether or not we'll need to
5 get into the factual nuances of excusable neglect argument
6 which as Your Honor is aware is very fact intensive inquiry.
7 But they did not agree to that. So at this point we would ask
8 the Court to deny the motion. We think it's probably one of
9 the least sympathetic cases of all of the ones that have been
10 filed so far. But I believe counsel for EDS is here, at least
11 their local counsel.

12 THE COURT: All right. Thank you.

13 MR. HUTSON: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. HUTSON: Richard Hutson on behalf of Export
16 Development.

17 THE COURT: I'm sorry, your name again, sir?

18 MR. HUTSON: Richard Hutson on behalf of Export
19 Development, Your Honor.

20 THE COURT: Thank you, Mr. Hutson.

21 MR. HUTSON: Your Honor, we had filed a motion for
22 pro hac to allow for our national counsel to make it here from
23 California to proceed on this matter, however the debtors filed
24 a late amended opposition -- objection to our motion which our
25 counsel did not receive until Monday morning, yesterday

1 morning.

2 THE COURT: They filed an objection to the pro hac
3 motion?

4 MR. HUTSON: Oh, no, Your Honor.

5 THE COURT: Okay.

6 MR. HUTSON: To our motion to allow --

7 THE COURT: To allow the claim. Okay. I've read the
8 papers. I'm familiar with your motion and their response.

9 MR. HUTSON: Right. And so our national counsel did
10 not make it here today because they did not feel that they had
11 sufficient time to respond to the debtor's amended objection
12 which was filed so late.

13 THE COURT: Why didn't they agree just to adjourn it
14 as Mr. Foley had suggested?

15 MR. HUTSON: Well, Your Honor, we would like to
16 adjourn it but if you look at the debtor's response to our
17 motion they never disputed any of the facts, they never argued
18 in opposition. Their response was pretty much that they needed
19 for the time to conduct discovery. Our response to that is
20 well, if we're going to adjourn this matter anyway why not use
21 that time -- utilize that time to conduct the discovery that is
22 needed? We looked at this situation as though we pretty much
23 put forward all the evidence and all the facts that is needed.
24 We don't see the need for the discovery. However, --

25 THE COURT: Let me ask. What are you asking me for

1 this morning. Are you asking to go forward on your motion or
2 are you asking that it be set down at another time and you're
3 asking for discovery, or what are you asking me to do?

4 MR. HUTSON: I'm asking to adjourn this matter to set
5 it down for another time and that the debtors be allowed to use
6 that time to conduct the discovery that is needed so that our
7 client is not spending further litigation expenses on this
8 matter further on into the future. The debtors first ask for
9 this matter to be pushed off until they confirmed the
10 liquidation plan. They also then asked that in the alternative
11 that this matter be continued out so they can conduct
12 discovery. We're pretty much granting them their second
13 request which is push it out so that they can conduct
14 discovery.

15 THE COURT: Why shouldn't this matter be addressed in
16 connection with plan confirmation process? I mean, that's when
17 if you have an administrative expense which is I understand
18 what you want to say.

19 MR. HUTSON: Yes, Your Honor.

20 THE COURT: If you have an administrative expense it
21 was late filed and we have to litigate the issue of excusable
22 neglect. I mean, that claim's not going to be paid until the
23 effective date of the plan at the earliest anyway, why do we
24 need to take the resources, the limited resources this debtor
25 has now and spread them even more broadly by resolving these

1 issues?

2 MR. HUTSON: Well, Your Honor, we're sensitive to
3 that, however we believe that it is Export's right to have this
4 Court make such a determination. It's within this Court's
5 discretion to do so. And so that Export is not expending
6 further litigation expenses they need to know now, we believe,
7 whether or not their claim will be allowed or not.

8 THE COURT: Why?

9 MR. HUTSON: Because in terms of the amount of the
10 litigation expenses they've put on this anyway we believe first
11 that the debtor helped contribute to this type -- to the late
12 filing of this so we need to make -- we need this Court to make
13 that type of determination as to whether or not they can
14 actually bring the claim so that they're not focusing on this
15 anymore and they can write it off if need be.

16 THE COURT: Any other reasons?

17 MR. HUTSON: Your Honor, we believe that we've stated
18 all those in our brief. And we just ask that the debtor not be
19 allowed to -- I don't want to say waste our time, but I mean,
20 not, you know, force our client to expend further litigation
21 expenses on this.

22 THE COURT: Now when do you want -- what are you
23 asking me to adjourn this to?

24 MR. HUTSON: At the very earliest the May 28th
25 hearing date.

1 THE COURT: All right. Thank you. Let me hear again
2 from Mr. Foley.

3 MR. FOLEY: Your Honor, is correct, we don't want to
4 waste anyone's time or resources which is why we think this
5 matter need not be litigated at the present time just like the
6 other movants who have requested permission to have their
7 claims be deemed timely filed. They're so, you know, each one
8 is factually different and unique and it requires evidentiary
9 proof. They obviously don't have that evidentiary proof today.
10 To the extent that they are simply relying on the facts alleged
11 in the motion we think that's insufficient in and of its face.
12 We think the only thing the Court could do today if it were to
13 rule on the motion would be to deny it.

14 But the point is there shouldn't be -- in order for
15 us to vet whether or not they can meet the excusable neglect
16 standard we would need to do discovery, and there's no point in
17 doing it at this point when we don't know what the
18 ramifications are going to be with respect to the unsecured
19 creditor body or with respect to the administrative claimants
20 as Your Honor points out. The earliest the claim could be paid
21 even if it's deemed timely filed, you know, we haven't even
22 addressed the substance of the claim. If Your Honor recalls
23 from reading the papers this is a credit insurer who paid off
24 Tech Craft. This is a \$550,000 alleged 503(b)(9) claim. And
25 so there isn't -- there may be some issues with Tech Craft and

1 doing discovery with them and who got what notice when.
2 There's just no point in incurring this litigation cost at this
3 point. So we are okay with adjourning to May 28th or June
4 23rd, but we're simply going to ask the Court again at that
5 time to adjourn it further. We're not going to engage in any
6 discovery prior to that time because they're not being
7 prejudiced. They're not prejudiced at all. They're not being
8 asked to expend any resources. Their motion's on file, it can
9 sit until it needs to be addressed and they won't be prejudiced
10 as part of the plan process because we will have to address it
11 at that time.

12 THE COURT: All right, thank you. Does any other
13 party wish to be heard in connection with this matter? Mr.
14 Hutson, you wish to respond?

15 MR. HUTSON: Yes, Your Honor. Your Honor, I think
16 we're -- I understand the debtor's need to proceed with further
17 discovery, however, you know, I think our main response is that
18 we pretty much have put forward all of the evidence that's
19 needed in this case. I understand, you know, --

20 THE COURT: Well, you're not going to ask me to
21 decide it today, because --

22 MR. HUTSON: No, no.

23 THE COURT: -- because if you do I think Mr. Foley's
24 correct, I don't have, you know, the evidence that I could
25 allow to your claim at this point.

1 MR. HUTSON: No. I certainly understand that, Your
2 Honor.

3 THE COURT: Okay.

4 MR. HUTSON: My point is that we've put forth all the
5 evidence that the debtors need to consider. They, you know,
6 this is not a very fact intensive -- as very fact intensive as
7 Mr. Foley makes this out to be, because the evidence is very
8 simple. The facts are very simple. We set them forward in our
9 brief. The debtors only need consider whether or not this --
10 it should be allowed or shouldn't.

11 THE COURT: Well, excusable neglect is a very fact
12 intensive matter, and certainly I don't have the facts that I
13 would need to have in order to make such a finding at this
14 point.

15 MR. HUTSON: That's correct.

16 THE COURT: And if you're going to go forward on that
17 they debtor is going to need to do some discovery on that to
18 find out why this neglect, which obviously we have, is
19 excusable, and apply the proper standard on that which
20 obviously the parties have agreed is the Supreme Court case.
21 But that being said I am going to go ahead and adjourn this
22 matter to the 28th of May. I'm not going to allow any
23 discovery to go forward between now and then on the matter. I
24 would like you to consult with the debtor about, you know, how
25 this matter should be resolved. But the Court feels very

1 strongly it should be part of the claims overall resolution
2 process be dealt with as part of the plan confirmation process
3 so that this can be done in an orderly fashion and not a
4 piecemeal fashion. If you need to come back on the 28th and
5 represent to me why that should be the case I'll certainly hear
6 you on the 28th. But I'm just telling you what the Court's
7 inclination is.

8 MR. HUTSON: Thank you, Your Honor.

9 THE COURT: So this will be continued until the 28th
10 of May. Mr. Foley, do we have anything further we need to take
11 up today?

12 MR. FOLEY: Your Honor, if I could have one minute to
13 talk to --

14 THE COURT: Yes.

15 (Pause)

16 MR. FOLEY: Your Honor, there's no more items on the
17 agenda, but there is one item with respect to some briefing
18 that you may be expecting with respect to the Tom Tom matter
19 that Mr. Fredericks can address.

20 THE COURT: All right. Thank you.

21 MR. FREDERICKS: Good morning again, Ian Fredericks
22 for the record, Your Honor. As you may recall I believe at the
23 last hearing stipulation was entered into with TomTom whereby
24 the parties set up a briefing schedule in addition to some
25 other resolutions they had reached. We believe we've reached a

1 global resolution in principle with TomTom. The debtors are
2 still considering it and we want to share it with the committee
3 before we go forward. But in the interim we've agreed with
4 counsel of Tom Tom to postpone the briefing schedule. So Your
5 Honor shouldn't expect to receive any briefs on that. I
6 believe our opening brief was due last Friday.

7 THE COURT: So I won't have to resolve that issue.
8 That's good.

9 MR. FREDERICKS: Not yet.

10 THE COURT: Not yet. Still more to come.

11 MR. FREDERICKS: I believe so.

12 THE COURT: All right, very good. While I
13 congratulate you, however I encourage you to get that one
14 resolved at least and we'll postpone that as long as possible
15 as well.

16 MR. FREDERICKS: All right, thank you, Your Honor.

17 THE COURT: All right, thank you.

18 COURT DEPUTY: All rise. The Court is now adjourned.

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C E R T I F I C A T I O N

I, KIMBERLY UPSHUR, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter, and to the best of my ability.

/s/ Kimberly Upshur

DATE: May 13, 2009

KIMBERLY UPSHUR

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